

**EXPLANATORY MEMORANDUM TO**  
**THE LANDFILL TAX (AMENDMENT) (NO. 2) REGULATIONS 2010**  
**2010 No. 2437**

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

The Regulations clarify the definition of income for the purposes of the Landfill Communities Fund ("LCF") by specifying that it includes capital receipts.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 Landfill Tax ("LFT") was established by section 39 of the Finance Act 1996 ("FA 1996") and is chargeable on the disposal of waste made by way of landfill at a landfill site. Section 51 FA 1996 provides a regulation making power whereby persons liable to pay LFT are entitled to credit against their LFT liability where prescribed conditions are fulfilled and in accordance with prescribed rules. Section 53(1) provides for regulations to be made for securing an entitlement to credit if those persons pay sums to an environmental body and other prescribed conditions are fulfilled.

4.2 The Landfill Tax Regulations 1996 (SI 1996/1527), ("the principal Regulations"), were made under various powers in FA 1996 including sections 51 and 53.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The LCF redresses some of the environmental costs of landfill by improving the environment in the vicinity of landfill sites. It does this by allowing landfill site operators to claim a tax credit against their landfill tax liability for qualifying contributions made to enrolled environmental bodies. Environmental bodies must apply qualifying contributions they receive to approved objects. Projects benefiting from LCF funding include those that are involved with the reclaiming of land, improvements to local community facilities, repairs to places of worship and habitat creation in support of biodiversity.

7.2 Existing policy is that where an environmental body disposes of an asset purchased with a qualifying contribution, the proceeds are deemed to be income and must also be applied to the approved objects. However, following High Court and Court of Appeal judgements, the interpretation of income for the purposes of the LCF is currently open to doubt. These Regulations provide clarity by specifying that income includes the proceeds from the disposal of an asset purchased with a qualifying contribution or purchased with proceeds from the disposal of an asset originally derived from a qualifying contribution. This provides assurance that funds will not fall outside the scope of the scheme and will, therefore, continue to be applied to the environmental objects of the LCF.

### *Consolidation*

7.3 This instrument amends the principal Regulations. There are no plans for consolidation.

## **8. Consultation outcome**

8.1 The amendment clarifies existing policy and therefore consultation is not considered necessary.

## **9. Guidance**

9.1 Existing guidance will be reviewed and amended where appropriate to reflect the regulatory change.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

**11. Regulating small business**

11.1 The legislation applies to small environmental bodies for which the impacts will be negligible.

**12. Monitoring & review**

12.1 The effect of this regulatory change will be monitored and reviewed as part of HM Revenue and Customs' normal assurance activities.

**13. Contact**

Leonne Jackson at HM Revenue & Customs Tel: 0161 827 0323 can answer any queries regarding the instrument.